IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 7301 of 2005

For Approval and Signature:

THE HON'BLE MR.JUSTICE SHARAD D.DAVE

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?
2	To be referred to the Reporter or not ?
3	Whether their Lordships wish to see the fair copy of the judgment ?
4	Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 of any order made thereunder ?
5	Whether it is to be circulated to the civil judge ?

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PAPPU ALIAS NILESH ABAJI PATIL - Petitioner(s)

Versus

STATE OF GUJARAT &3 - Respondent(s)

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Appearance :

MS KRISHNA U MISHRA for Petitioner No(s).: 1.

Mr.P.D.Bhate, A.G.P.for Respondent No(s).: 1,2,3.

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CORAM :THE HON'BLE MR.JUSTICE SHARAD D.DAVE

Date : 22/06/2005

ORAL JUDGMENT

1.By filing this petition, the petitioner detenu has challenged the detention order dated 22.2.2005 passed by the Police Commissioner, Surat City in exercise of the powers conferred upon him under sub-section (1) of Section 3 of the Gujarat Prevention Anti-social

Activities Act, 1985 (“the Act” for short), as, the Detaining Authority found that the detenu is a “dangerous person” and is required to be detained under the preventive detention, so that, he may not continue with such type of illegal activities.

2. Along with the detention order, the detenu was also served with the grounds of detention of the same date. In the said grounds, there is a reference to four criminal cases which are filed under the Indian Penal Code. In the grounds of detention, the statements of certain witnesses have been recorded.

3. At the time of hearing of this petition, it is argued by the learned advocate for the petitioner that the last offence against petitioner has been registered on 5.11.2004 and the detention order has been passed by the detaining authority on 22.2.2005, and, therefore, there is a delay of more than two months in passing the detention order by the detaining authority and, therefore, impugned order of detention is required to be quashed and set aside. Learned advocate appearing for the petitioner has relied upon the decision of this Court (Coram: J.R.Vora,J) in Special Civil Application No.10182 of 2003 and has submitted that the delay in passing of the detention order may reflect non-application of mind in reaching to the subjective satisfaction by the detaining authority. It is, therefore, requested to quash and set aside the impugned detention order passed against the petitioner.

4. On the other-hand, Mr.Bhate, learned AGP has tried to support the impugned detention order passed against the petitioner. Affidavit-in-reply is filed on behalf of respondent no.2.

5. It appears from the record that offence under Section 379 of the Indian Penal Code came to be registered against the petitioner for the theft of two wheeler vehicles on 6.5.2004, second on 2.6.2004, third on 16.8.2004 and fourth on 5.11.2004. It is true that the delay by itself in passing the order of detention is not fatal to the detention of the person and the same has to be looked into from the facts of each case. It is now well settled that in each case, the courts have to see the length, magnitude and intensity of the questionable activities of a person to find out whether the activities are prejudicial to maintenance of “public order” or only “law and order”. Therefore, in the instant case, what is required to scrutinise is, as to whether the activities alleged against the petitioner detenu would affect the maintenance of “law and order” or maintenance of “public order”. Considering the facts and circumstances of the case and considering the judgments referred to above, it would be difficult to say that the offences alleged against the petitioner would affect the even tempo of public life. In that view of the matter, the detaining

authority was not justified in arriving at the satisfaction that the activities of the petitioner detenu were likely to adversely affect maintenance of “public order”. Under the circumstances, the detention order is required to be quashed and set aside.

6. In view of what is stated above, the petition is allowed. The order of detention dated 22.2.2005 is quashed and set aside. The detenu Pappu @ Nilesh Abaji Patil is ordered to be set at liberty forthwith if he is not required in connection with any other case. Rule is made absolute accordingly. Direct service is permitted.

(SHARAD D DAVE, J)

srilatha